

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JABORIE BROWN,

Petitioner,

v.

WARDEN,

Respondent.

No. 1:20-cv-01156-NONE-JLT (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS (Doc. No. 5)

ORDER DISMISSING PETITION FOR WRIT
OF HABEAS CORPUS (Doc. No. 1)

ORDER DIRECTING CLERK OF COURT TO
ASSIGN DISTRICT JUDGE FOR PURPOSE
OF CLOSING CASE AND THEN ENTER
JUDGMENT AND CLOSE CASE

ORDER DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

Petitioner is a federal prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. On August 24, 2020, the assigned magistrate judge issued findings and recommendations to dismiss the petition as duplicative and successive. (Doc. No. 5.) The findings and recommendations were served upon all parties and contained notice that any objections were to be filed within ten days from the date of service of that order. To date, no party has filed objections.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the court has conducted a de novo review of the case. Having carefully reviewed the entire file, the court concludes that the findings and recommendation are supported by the record and proper analysis.

1 In addition, the court declines to issue a certificate of appealability. A state prisoner
 2 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of
 3 his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537
 4 U.S. 322, 335-336 (2003). A successive petition under 28 U.S.C. § 2255 that is disguised as a §
 5 2241 petition required a certificate of appealability. *Harrison v. Ollison*, 519 F.3d 952, 958 (9th
 6 Cir. 2008); *Porter v. Adams*, 244 F.3d 1006, 1007 (9th Cir. 2001). The controlling statute in
 7 determining whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as
 8 follows:

9 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district
 10 judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit
 in which the proceeding is held.

11 (b) There shall be no right of appeal from a final order in a proceeding to test the
 12 validity of a warrant to remove to another district or place for commitment or trial a person
 13 charged with a criminal offense against the United States, or to test the validity of such person's
 detention pending removal proceedings.

14 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may
 not be taken to the court of appeals from—

15 (A) the final order in a habeas corpus proceeding in which the detention
 16 complained of arises out of process issued by a State court; or

17 (B) the final order in a proceeding under section 2255.

18 (2) A certificate of appealability may issue under paragraph (1) only if the applicant has
 made a substantial showing of the denial of a constitutional right.

19 (3) The certificate of appealability under paragraph (1) shall indicate which specific issue
 20 or issues satisfy the showing required by paragraph (2).

21 If a court denies a petitioner's petition, the court may only issue a certificate of
 22 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.
 23 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that
 24 "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have
 25 been resolved in a different manner or that the issues presented were 'adequate to deserve
 26 encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting
 27 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

28 /////

1 In the present case, the court finds that petitioner has not made the required substantial
2 showing of the denial of a constitutional right to justify the issuance of a certificate of
3 appealability. Reasonable jurists would not find the court's determination that petitioner is not
4 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to
5 proceed further. Thus, the court DECLINES to issue a certificate of appealability.

6 Accordingly, the court orders as follows:

- 7 1. The findings and recommendations, filed August 24, 2020 (Doc. No. 5), is
8 ADOPTED IN FULL;
- 9 2. The petition for writ of habeas corpus is DISMISSED;
- 10 3. The Clerk of Court is DIRECTED to assign a district judge to this case for the
11 purpose of closing the case and then to ENTER JUDGMENT and close the case; and,
- 12 4. The court DECLINES to issue a certificate of appealability.

13 This order terminates the action in its entirety.

14
15 IT IS SO ORDERED.

16 Dated: October 5, 2021

17 
18 _____
19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26
27
28